

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan.  (U 39 E)	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)  Bond Charge Phase

**ADMINISTRATIVE LAW JUDGE'S RULING**

On August 5, 2002, Pacific Gas and Electric Company (PG&E) filed a "Motion to Compel Responses to Data Requests and Production of Documents by the California Department of Water Resources (DWR)". (Motion to Compel)

On August 6, 2002, DWR filed "Responses to Data Requests from Administrative Law Judge (ALJ) and Parties to Application (A.) 00-11-038, et al. Bond Charge Phase," which was previously identified as Exhibit 3 in this proceeding. On August 9, 2002, DWR responded to the Motion to Compel with a Memorandum served on all parties to this proceeding.

On August 13, 2002, ALJ Sullivan presided over a telephonic Law and Motion hearing that ruled on discovery issues and received into evidence late-filed Exhibits 2 and 3. This ruling memorializes the key discovery rulings made on August 13, 2002, and resolves all open issues. Although this ruling will explore each discovery issue, in summary, the Law and Motion hearing led to the identification of those data requests fulfilled by DWR, to agreements by DWR to provide PG&E with information pertaining to models that DWR used to support testimony provided in the Bond Charge Phase of this proceeding, and to the denial of PG&E's motions to obtain access to information exchanged between DWR and Rating Agencies and between DWR and California Public Utilities Commission staff as this information falls outside the scope of this proceeding.

### **Discovery Issues and Scope of Proceeding**

A July 26, 2002 ruling in this proceeding noted the unique situation that both the Commission and parties face in this proceeding. The ruling states:

Several parties raised issues concerning access to information used by DWR in preparation of the testimony submitted in this proceeding. Discussions proved fruitful, with DWR agreeing to respond constructively to requests for information. In addition, the discussion recognized that information supporting the structure of the bond offering would assist the deliberations of this Commission in setting a bond charge.

Discussions also made clear that parties to this proceeding face a novel situation. Section 80110 of the California Water Code states:

“For purposes of this division and except as otherwise provided in this section, the Public Utility Commission’s authority as set forth in Section 451 of the Public Utilities Code shall apply, except any just and reasonable review under Section 451 shall be conducted and determined by the department. [Department of Water Resources]”

Thus, the responsibility for determining the reasonableness of the revenues required to finance the bonds rests with DWR. On the other hand, this Commission and parties to our proceeding require information to ensure that any bond charges adopted by this Commission are supported by facts. In the Rate Agreement, DWR has recognized that Commission processes require both its participation in our proceedings and the release of information:

“Section 7.2 Department Participation. Consistent with the limitations set forth in Water Code Section 80110, upon the request of the Commission, the Department will participate in any Commission proceedings, including providing witnesses, attending public hearings, and providing any other materials necessary to facilitate the Commission’s completion of its proceedings, taken in connection with the establishment of Power Charges or Bond Charges by the Commission.”

Recognizing that responsibility for determining the reasonableness of the revenue requirement needed to finance bonds rests with DWR but that the Commission’s determination of bond charges requires access to information by the Commission and parties to this proceeding, parties should make special efforts to resolve discovery disputes through discussion. If, however, parties are unable to settle a particular dispute, the Law and Motion Judge, will resolve particular discovery disputes.

This ruling is consistent with the guidance concerning discovery adopted in Decision (D.) 02-02-051, which states as follows:

“All information provided by DWR will be made available to the public in accordance with applicable laws and regulations. In addition, the Rate Agreement requires DWR, when requested by the Commission, to participate in our proceedings where Bond Charges and/or Power Charges are set. Although DWR will be subject to the same Commission Rules as the other parties, such as those pertaining to ex parte communications, *we will accord DWR deference, particularly regarding matters that the Rate Agreement indicates are the exclusive responsibility of DWR*. Thus, parties should not expect to use Commission proceedings as a vehicle to investigate or contest

whether costs included in DWR's Revenue Requirement are just and reasonable under Pub. Util. Code § 451." (D.02-02-051, p. 31, emphasis added, footnote omitted).

In addition, we note that the Motion to Compel asks for specific information concerning computer models. The topic of computer model is covered by Pub. Util. Code §§ 1821-1822. The most relevant part states:

"1822.(a) Any computer model that is the basis for any testimony or exhibit in a hearing or a proceeding before the commission shall be available to, and subject to verification by, the commission and parties to the hearing or proceedings to the extent necessary for cross-examination or rebuttal, subject to applicable rules of evidence . . ."

### **Position of PG&E**

PG&E states:

"Prior to and subsequent to the filing of DWR Testimony, PG&E propounded several data requests, including request for documents and access to computer modeling assumptions and analyses referenced in the DWR Testimony, as well as other DWR documents submitted to the Commission under the CPUC –DWR Rate Agreement."<sup>1</sup>

PG&E further states "[m]any of these documents . . . apparently had been provided to the Commission and its staff as support for the "Addendum to Summary of Material Terms. . ."<sup>2</sup>

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<sup>1</sup> PG&E, Motion to Compel, p. 2.

<sup>2</sup> *Ibid.*, p. 4.

PG&E requests access to these documents, and argues that DWR has an obligation to respond to its data requests. PG&E cites as authorities D.02-02-051, and Pub. Util. Code §§ 1821 et seq. In particular, PG&E claims that it has the right to all of DWR's "computer models and their related results and assumptions."<sup>3</sup> In addition, PG&E states that the ALJ Ruling of July 26, 2002 provides a further basis for compelling discovery.

PG&E summarizes its argument by stating that "at the heart of this discovery dispute is a fundamental principle regarding the relationship between DWR and the Commission and interested parties. . ."<sup>4</sup> PG&E concludes by arguing that the scale of the bond financing "would make it one of the largest single rate increases ever approved by the Commission."<sup>5</sup> Finally, PG&E itemizes the specific data requests covered by its Motion to Compel.

### **Position of DWR**

In its August 9, 2002 Memorandum, DWR argues that PG&E's Motion to Compel "seeks to obtain information that is not necessary to facilitate completion of this proceeding."<sup>6</sup> DWR concludes that the Commission should therefore deny the PG&E motion.

Additionally, DWR argues that it has fulfilled its part of the Rate Agreement<sup>7</sup> by providing a witness, attending hearings, and providing written

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<sup>3</sup> *Ibid.*, p. 5.

<sup>4</sup> *Ibid.*, p. 7.

<sup>5</sup> *Ibid.*

<sup>6</sup> DWR, Memorandum, August 9, 2002, p. 1, emphasis in original.

<sup>7</sup> D.02-02-051, Appendix C.

response to data requests. DWR states that the scope of the proceeding addresses “only the technical tasks of identifying the revenue requirement which the bond charge will recover, how to calculate the bond charge and undertaking the ratemaking steps necessary to establish and collect a bond charge.”<sup>8</sup> DWR argues that PG&E has sufficient information and the information it now seeks is not necessary for the Commission.

## **Discussion**

At the Law and Motion hearing of August 13, 2002, PG&E and DWR restated their global positions as reviewed above. ALJ Sullivan did not rule on the global motions. The ALJ stated that PG&E’s data requests did raise issues because of their broad scope and unclear relevance for the evidentiary record in the proceeding. The ALJ also noted that §§ 1821 and 1822, as a general matter, did provide parties with access to computer models. Subsequently, the hearing turned to a review of the specific data requests.

Concerning Data Requests No. 2, Q.3, No. 2, Q.4, No. 2 Q. 12, No. 2 Q.14, No.3 Q.3, No. 4 Q. 7, No. 5 Q.2 and No. 5 Q3, DWR and PG&E agreed that these issues were resolved and that DWR need not provide any further information.

Concerning Data Requests No. 1 Q.5, No. 2 Q.2, No. 2 Q5, No. 2 Q.13 (part b), ALJ Sullivan noted that these data requests pertain to computer models. DWR agreed to provide PG&E with modeling data and access to experts concerning the information covered by these data requests.

Data Requests No.1 Q4, No.1 Q7, No. 1 Q8, No. 1 Q.9, No.2 Q5 (non-modeling portions), No.2 Q.6, No.2 Q.13 (parts a, c and d), No. 3 Q.1, No.3 Q.2,

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<sup>8</sup> DWR, Memorandum, August 9, 2002, p. 2

No.4 Q1, No.4 Q.2 No.4 Q.4, and No.5 Q.5, however, pertain to documents, presentations, and communications concerning the underlying financing and revenue requirement determination and size of the bond offering. Pursuant to statute, responsibility for determining the reasonableness of the revenue requirement for the bond offering lies with DWR. Concerning the size of the bond offering, this issue is covered in the Rate Agreement, and subject to a Summary of Material Terms. In addition, D.02-03-063 establishes a “public process with opportunity for comment if the Commission authorizes changes to the material terms beyond those described in the summary.”<sup>9</sup> Therefore, the data requests pertain to issues beyond the scope of this current proceeding, the information is not necessary for this proceeding, and the data requests cannot lead to the discovery of admissible evidence.

**Exhibit 2, Exhibit 3, and Exhibit 101**

During the evidentiary hearings, exhibit numbers 2 and 3 were identified and reserved for late-filed exhibits by DWR. Exhibit 2, filed under seal, is titled “IOU Load/Metered Sales and Direct Access Load.” Exhibit 3 is DWR’s “Responses to Data Requests From Administrative Law Judge and Parties to Application 00-11-038 et al., Bond Charge Phase, August 6, 2002.” During the Law and Motion hearing on August 13, 2002, these exhibits were received into evidence without objection.

On August 8, 2002, PG&E served late-filed exhibit 101, “Alternative Bond Charge Scenarios.” No party has filed any objection to the receipt of this exhibit into evidence. Therefore, it is received into evidence as of the date of this ruling.

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<sup>9</sup> D.02-03-063, *mimeo*, p. 14.

**IT IS RULED** that:

1. Pacific Gas and Electric Company's Motion to Compel Responses to Data Requests and Production of Documents by the California Department of Water Resources is denied.

2. Exhibits 2 and 3 are received into evidence.

3. Exhibit 101 is received into evidence.

Dated August 16, 2002, at San Francisco, California.

/s/ TIMOTHY J. SULLIVAN

Timothy J. Sullivan  
Administrative Law Judge



## CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling on all parties of record in this proceeding or their attorneys of record.

Dated August 16, 2002, at San Francisco, California.

/s/ JEANNIE CHANG

Jeannie Chang

## N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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